How to Terminate a Strata Scheme (even if required consent is not provided by all parties)

There are numerous ways to terminate a strata scheme such as approaching the Registrar-General or forcing a sale pursuant to the strata renewal process, but how do you achieve this if the required consent is not provided by all relevant parties?

If unanimous support is not provided by all lot owners and there are competing interests, a party may approach the Supreme Court to have a strata scheme terminated pursuant to section 136 of the Strata Schemes Development Act 2015 ("**SSDA**"), which is known as a "termination order". Part 9, Division 3 of the SSDA deals with the relevant provisions surrounding such termination.

Pursuant to section 135 of the SSDA, an owner of a lot in the scheme, mortgagee, chargee or the owners corporation may apply to the Supreme Court for a termination order for a strata scheme, where notice of the application must be served in accordance with the rules of the Court on:

(a) each person referred to in section 135(1), other than the applicant; and

(b) the local council; and

(c) the Registrar-General; and

(d) any other person (including creditors of the owners corporation) directed by the Court.

The termination order

As outlined in section 136(2), a termination order may include directions about any of the following matters (where all of these matters must be covered in the order sought by the applicant):

(a) the sale or disposition of property of the owners corporation;

(b) the discharge of the liabilities of the owners corporation;

(c) the termination of any development scheme that relates to the parcel and the cancellation of the strata development contract;

(d) the termination or amendment of a strata management statement that relates to the parcel;

(e) the persons liable to contribute amounts required for the discharge of the liabilities of the owners corporation and the proportionate liability of the persons;

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(f) the distribution of the assets of the owners corporation and the proportionate entitlement of each person under the distribution;

(g) the administration, powers, authorities, duties and functions of the owners corporation;

(h) the voting power at meetings of the owners corporation of persons referred to in paragraph (e) or (f) above;

(i) the winding up of the owners corporation, including the appointment, powers, authorities, duties and functions of any person to carry out the winding up;

(j) any matter in relation to which the Court considers it just and equitable, in the circumstances of the case, to make provision in the order.

The Court will consider in any application for termination whether the interests of anyone affected by the scheme may be prejudiced if it is terminated and whether the relevant strata plan will be able to discharge its obligations to creditors if the scheme is terminated. The case of *Pritpro Pty Ltd v Willoughby Municipal Council* (18 March 1986, unreported) held that the function of the Court is to ensure that no one is prejudiced by the termination of the scheme and that there is a need to protect creditors, actual and contingent, who may have charges on the building as against the body corporate.

A termination order takes effect on the day specified in the order. Section 138 outlines the effect of the order, being:

(a) the estate or interest of the former owners in the part of the former parcel that consisted of common property vested in the owners corporation as agent for the former owners vests in the owners corporation as principal, subject only to an estate or interest recorded in:

    (i) the folio, or on any registered lease or registered sublease, evidencing the estate or interest of the owners corporation in the common property; or

    (ii) the relevant folio created under section 29 (1), and

(b) the estate or interest of each person in the part of the former parcel that did not consist of common property vests in the owners corporation as principal, subject only to an estate or interest recorded in:

    (i) the folio evidencing the estate or interest of the owners corporation in the common property comprised in the former parcel; or

    (ii) the relevant folio created under section 29(1),

    to the extent the recorded estate or interest was capable of affecting a former lot, and

(c) each person who, immediately before the order took effect, was an owner of a lot in the strata scheme ceases to be an owner of a lot in the scheme; and

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(d) each person whose estate or interest is divested by paragraph (b) has instead the rights and liabilities conferred or imposed on the person by the order, and

Pursuant to section 146, once the strata scheme is terminated:

(a) the owners corporations is dissolved and the land in the former parcel immediately before the scheme is terminated;

(b) the assets of the former owners corporation vest in the former owners as tenants in common in shares proportional to the unit entitlements of their former lots;

(c) the estate or interest of the former owners in land vested by this section is subject to any estate or interest registered or recorded, immediately before termination of the scheme, in the folios for the lots and the common property in the former parcel;

(d) the former owners of lots are liable for the liabilities of the owners corporation in shares proportional to the unit entitlements of their former lots; and

(e) any legal proceedings begun by or against the owners corporation may be completed by or against the former owners.

On termination of the strata scheme, the transaction may potentially be liable for stamp duty as the common property will vest in the lot owners.

Winding up of the scheme

Ordinarily, the Court will appoint a qualified and disinterested person to carry out the winding up and this will not be dispensed with simply because it is asserted that the body corporate has no assets or liabilities.

In *Borsky v Proprietors Strata Plan No 19833 & Ors* (1986) 7 NSWLR 84, McLelland J said:

> *"Nevertheless, it seems to me that ordinarily the Court should appoint some appropriately qualified and disinterested person, such as a registered liquidator, to carry out the winding-up of the body corporate.*
>
> *The proposed appointee would, of course, have to consent to the appointment. I see no sufficient reason not to take this course in the present case. This view having been foreshadowed during the course of argument, the plaintiff has procured an appropriate consent from a liquidator registered under the Companies (New South Wales) Code."*

However, in special circumstances the Court may appoint a non-qualified person (even the applicant) to carry out the winding up. This occurred in *Re Application of Custom Credit Corporation Ltd* (1975) 2 BPR 9108 where Wootten J cited the special circumstances as:

- the applicant having an overwhelming interest (as mortgagee) in the efficient winding up of the body corporate;

- the applicant having to act to rectify a situation which was not of its own making (i.e. the sole proprietor went into liquidation after the building was demolished);

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- there being no substantial interest in any other parties;
- there being no known outstanding debts; and
- the applicant volunteered to undertake the task.

We have expertise in this area of law and can provide advice in relation to your queries which includes providing advice in relation to what evidence is required to terminate a strata scheme by way of Supreme Court order.

Key takeaways

- A termination order can be sought from the Supreme Court if unanimous consent from all lot owners is not achieved.
- The Supreme Court will consider the interests of all affected parties before granting a termination order.
- Section 136 of the Strata Schemes Development Act outlines the necessary provisions for a termination order.
- The termination order can include directions on the sale of property, discharge of liabilities, and winding up of the owners corporation.
- It is crucial to ensure that creditors are protected during the termination process.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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